State of Arizona Senate Forty-fifth Legislature Second Regular Session 2002

CHAPTER 223

SENATE BILL 1202

AN ACT

AMENDING SECTIONS 13-3961, 13-3967 AND 41-1604.07, ARIZONA REVISED STATUTES; RELATING TO BAIL; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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Be it enacted by the Legislature of the State of Arizona: Section 1. Section 13-3961, Arizona Revised Statutes, is amended to read:

13-3961. Offenses not bailable: purpose; preconviction: exceptions

- A. A person WHO IS in custody shall not be admitted to bail if the proof is evident or the presumption great that he THE PERSON is guilty of the offense and the offense charged is EITHER:
 - 1. A capital offense.
 - 2. SEXUAL ASSAULT.
 - 3. SEXUAL CONDUCT WITH A MINOR WHO IS UNDER FIFTEEN YEARS OF AGE.
 - 4. MOLESTATION OF A CHILD WHO IS UNDER FIFTEEN YEARS OF AGE.
- B. THE PURPOSES OF BAIL AND ANY CONDITIONS OF RELEASE THAT ARE SET BY A JUDICIAL OFFICER INCLUDE:
 - 1. ASSURING THE APPEARANCE OF THE ACCUSED.
 - 2. PROTECTING AGAINST THE INTIMIDATION OF WITNESSES.
- 3. PROTECTING THE SAFETY OF THE VICTIM, ANY OTHER PERSON OR THE COMMUNITY.
- 8. C. A person WHO IS in custody shall not be admitted to bail if the person is charged with a felony offense and the state certifies by motion and the court finds after a hearing on the matter that there is clear and convincing evidence that the person charged poses a substantial danger to another person or the community, that no condition or combination of conditions of release may be imposed which THAT will reasonably assure the safety of the other person or the community and that the proof is evident or the presumption great that the person committed the offense for which he THE PERSON is charged.
- the ON oral motion of the state, the court shall order the hearing required by subsection B C at or within twenty-four hours of the initial appearance unless the person subject to detention or the state moves for a continuance. A continuance THAT IS granted on THE motion of the person shall not exceed five calendar days unless there are extenuating circumstances. A continuance on THE motion of the state shall be granted upon ON good cause shown and shall not exceed twenty-four hours. The person may be detained pending the hearing. The person shall be IS entitled to representation by counsel and shall be IS entitled to present information by proffer or otherwise, to testify, and to present witnesses in his THE PERSON'S own behalf. Testimony of the person charged given during the hearing shall not be admissible on the issue of guilt in any subsequent judicial proceeding, except as it might relate to the compliance with or violation of any condition of release subsequently imposed or the imposition of appropriate sentence or in perjury proceedings, or for the purposes of The case of such person shall be placed on an expedited calendar and, consistent with the sound administration of justice, his THE PERSON'S trial shall be given priority. Such person may be admitted to bail

- 1 -

in accordance with the ARIZONA rules of criminal procedure whenever a judicial officer finds that a subsequent event has eliminated the basis for such detention.

- D. E. The finding of an indictment or the filing of an information does not add to the strength of the proof or the presumption to be drawn therefrom.
- E. F. If there is clear and convincing evidence that a person in custody engaged in conduct constituting a dangerous crime against children, the person poses a substantial danger to another person or the community for the purposes of subsection B C.
 - Sec. 2. Section 13-3967, Arizona Revised Statutes, is amended to read: 13-3967. Release on bailable offenses before trial; definition
- A. In this section and section 13-3968, unless the context otherwise requires, "judicial officer" means any person or court authorized pursuant to the constitution or laws of this state to bail or otherwise release a person before trial or sentencing or pending appeal.
- 8. A. Any person charged with a public offense which is bailable as a matter of right shall At his appearance before a judicial officer, ANY PERSON WHO IS CHARGED WITH A PUBLIC OFFENSE THAT IS BAILABLE AS A MATTER OF RIGHT SHALL be ordered released pending trial on his own recognizance or upon ON the execution of bail in an amount specified by the judicial officer.
- C. B. In determining the method of release or the amount of bail, the judicial officer shall, on the basis of available information, SHALL take into account ALL OF THE FOLLOWING:
 - 1. THE VIEWS OF THE VICTIM.
 - 2. The nature and circumstances of the offense charged. —
 - 3. The weight of evidence against the accused. . his
- 4. THE ACCUSED'S family ties, employment, financial resources, character and mental condition.
 - 5. The results of any drug test submitted to the court. and
- 6. Whether the accused is using any substance if its possession or use is illegal pursuant to chapter 34 of this title.
 - 7. The length of residence in the community. , his
 - 8. THE ACCUSED'S record of arrests and convictions. ; and his
- 9. THE ACCUSED'S record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.
- D. C. When a determination is made to IF A JUDICIAL OFFICER ORDERS THE release OF a defendant charged with a felony either on his own recognizance or on bail, the judicial officer shall impose a condition that the DEFENDANT'S release is conditioned upon ON the defendant's good behavior while so released. , and upon ON a showing of probable cause that the defendant committed a felony ANY OFFENSE during the period of release, A JUDICIAL OFFICER MAY REVOKE the defendant's release may be revoked in accord with the provisions of PURSUANT TO section 13-3968.

- 2 -

- E. D. When the determination is made to release the person charged on his own recognizance or on bail, the AFTER PROVIDING NOTICE TO THE VICTIM PURSUANT TO SECTION 13-4406, A judicial officer may impose any of the following conditions ON A PERSON WHO IS RELEASED ON HIS OWN RECOGNIZANCE OR ON BAIL:
- 1. Place the person in the custody of a designated person or organization agreeing to supervise him.
- 2. Place restrictions on THE PERSON'S travel, associates or place of abode of the person during the period of release.
- 3. Require the deposit with the clerk of the court of cash or other security, such deposit to be returned upon the performance of the conditions of release.
- 4. Prohibit the person from possessing any dangerous weapon or engaging in certain described activities or indulging in intoxicating liquors or certain drugs.
- 5. Require the defendant PERSON to report regularly to and remain under the supervision of an officer of the court.
- 6. Impose any other conditions deemed reasonably necessary to assure appearance as required including a condition requiring that the person return to custody after specified hours.
- E. IN ADDITION TO ANY OF THE CONDITIONS A JUDICIAL OFFICER MAY IMPOSE PURSUANT TO SUBSECTION D OF THIS SECTION, THE JUDICIAL OFFICER SHALL IMPOSE BOTH OF THE FOLLOWING CONDITIONS ON A PERSON WHO IS CHARGED WITH A FELONY VIOLATION OF CHAPTER 14 OR 35.1 OF THIS TITLE AND WHO IS RELEASED ON HIS OWN RECOGNIZANCE OR ON BAIL:
 - 1. ELECTRONIC MONITORING WHERE AVAILABLE.
- 2. A CONDITION PROHIBITING THE PERSON FROM HAVING ANY CONTACT WITH THE VICTIM.
- F. A THE judicial officer authorizing WHO AUTHORIZES the release of the person charged on his own recognizance or on bail shall DO ALL OF THE FOLLOWING:
- 1. Issue an appropriate order containing statements of the conditions imposed. and shall
- 2. Inform such THE person of the penalties applicable THAT APPLY to ANY violation of the conditions of his release. and shall
- 3. Advise him THE PERSON that a warrant for his arrest may be issued immediately upon ON any such violation of the conditions of his release.
- G. A AT ANY TIME AFTER PROVIDING NOTICE TO THE VICTIM PURSUANT TO SECTION 13-4406, THE judicial officer ordering WHO ORDERS the release of a person on any condition specified in this section or the court in which a prosecution is pending may at any time amend the order to employ additional or different conditions of release, including either an increase or reduction in the amount of bail. ON APPLICATION, the defendant shall upon application be entitled to have the conditions of release reviewed by the judicial officer who imposed them or by the court in which the prosecution is pending.

- 3 -

Reasonable notice of such application shall be given to the county attorney AND THE VICTIM.

- H. ANY information THAT IS stated or offered in connection with any order pursuant to this section need not conform to the rules pertaining to admissibility of evidence in a court of law.
- I. Nothing contained in This section shall be construed to DOES NOT prevent the disposition of any case or class of cases by forfeiture of bail or collateral security where such disposition is authorized by the court.
- J. A judicial officer ordering WHO ORDERS the release of a juvenile who has been transferred to adult THE CRIMINAL DIVISION OF THE SUPERIOR court pursuant to section 8-327 or who has been charged as an adult pursuant to section 13-501 shall notify the appropriate school district on the release of the juvenile from custody.
- K. FOR THE PURPOSES OF THIS SECTION AND SECTION 13-3968, "JUDICIAL OFFICER" MEANS ANY PERSON OR COURT AUTHORIZED PURSUANT TO THE CONSTITUTION OR LAWS OF THIS STATE TO BAIL OR OTHERWISE RELEASE A PERSON BEFORE TRIAL OR SENTENCING OR PENDING APPEAL.
- Sec. 3. Section 41-1604.07, Arizona Revised Statutes, is amended to read:

41-1604.07. Earned release credits; forfeiture; restoration

- A. Pursuant to rules adopted by the director, each prisoner in the eligible earned release credit class shall be allowed an earned release credit of one day for every six days served except for those prisoners who are sentenced to serve the full term of imprisonment imposed by the court.
- B. Release credits earned by a prisoner pursuant to subsection A of this section shall not reduce the term of imprisonment imposed by the court on the prisoner.
- C. On reclassification of a prisoner resulting from the prisoner's failure to adhere to the rules of the department or failure to demonstrate a continual willingness to volunteer for or successfully participate in a work, educational, treatment or training program, the director may declare all release credits earned by the prisoner forfeited. In the discretion of the director forfeited release credits may subsequently be restored. The director shall maintain an account of release credits earned by each prisoner.
- D. A prisoner who has reached the prisoner's earned release date or sentence expiration date shall be released to begin the prisoner's term of community supervision imposed by the court or term of probation if the court waived community supervision pursuant to section 13-603, except that the director may deny or delay the prisoner's release to community supervision or probation if the director believes the prisoner may be a sexually violent person as defined in section 36-3701 until the screening process is complete and the director determines that the prisoner will not be referred to the county attorney pursuant to section 36-3702. If the term of community supervision is waived, the state department of corrections shall provide

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reasonable notice to the probation department of the scheduled release of the prisoner from confinement by the department. If the court waives community supervision, the director shall issue the prisoner an absolute discharge on the prisoner's earned release credit date. A prisoner who is released on the earned release credit date to serve a term of probation is not under the control of the state department of corrections when community supervision has been waived and the state department of corrections is not required to provide parole services.

- E. Notwithstanding subsection D of this section, a prisoner who fails to achieve functional literacy at an eighth grade literacy level shall not be released to begin the prisoner's term of community supervision until either the prisoner achieves an eighth grade functional literacy level as measured by standardized assessment testing or the prisoner serves the full term of imprisonment imposed by the court, whichever first occurs. This subsection does not apply to inmates who are any of the following:
- 1. Unable to meet the functional literacy standard required by section 31-229.02, subsection A, due to a medical, developmental or learning disability as described in section 31-229, subsection C.
 - 2. Classified as level five offenders.
 - 3. Foreign nationals.
- 4. Inmates who have less than six months incarceration to serve on commitment to the department.
- 5. Scheduled for release from the inmate's current sentence within one year of the effective date of this section BY JULY 18, 2001.
- The department shall establish conditions of community supervision it deems appropriate in order to ensure that the best interests of the prisoner and the citizens of this state are served. These conditions may include participation in a rehabilitation program or counseling and performance of community service work, EXCEPT THAT IF THE PRISONER WAS CONVICTED OF A VIOLATION OF SEXUAL CONDUCT WITH A MINOR UNDER FIFTEEN YEARS OF AGE OR MOLESTATION OF A CHILD UNDER FIFTEEN YEARS OF AGE, THE DEPARTMENT SHALL IMPOSE AS A CONDITION OF COMMUNITY SUPERVISION A PROHIBITION ON RESIDING WITHIN FOUR HUNDRED FORTY FEET OF A SCHOOL OR ITS ACCOMPANYING GROUNDS. If a prisoner who reaches the prisoner's earned release credit date refuses to sign and agree to abide by the conditions of supervision before release on community supervision, the prisoner shall not be released. When the prisoner reaches the sentence expiration date, the prisoner shall be released to begin the term of community supervision. If the prisoner refuses to sign and agree to abide by the conditions of release, the prisoner shall not be released on the sentence expiration date and shall serve the term of community supervision in prison. The department is required to supervise any offender on community supervision until the period of community supervision expires. The department may bring an offender in violation of the offender's terms and conditions before the board of executive clemency.

- 5 -

PURPOSES OF THIS SUBSECTION, "SCHOOL" MEANS ANY PUBLIC, CHARTER OR PRIVATE SCHOOL WHERE CHILDREN ATTEND CLASSES.

- G. The director pursuant to rules adopted by the department shall authorize the release of any prisoner on the prisoner's earned release credit date to serve any consecutive term imposed on the prisoner. The release shall be for the sentence completed only. The prisoner shall remain under the custody and control of the department. The director may authorize the rescission of the release to any consecutive term if the prisoner fails to adhere to the rules of the department.
- H. If a prisoner absconds from community supervision, any time spent before the prisoner is returned to custody is excluded in calculating the remaining period of community supervision.
- I. A prisoner shall forfeit five days of the prisoner's earned release credits:
- 1. If the court finds or a disciplinary hearing held after a review by and recommendations from the attorney general's office determines that the prisoner does any of the following:
 - (a) Brings a claim without substantial justification.
 - (b) Unreasonably expands or delays a proceeding.
- (c) Testifies falsely or otherwise presents false information or material to the court.
- (d) Submits a claim that is intended solely to harass the party it is filed against.
- 2. For each time the prisoner tests positive for any prohibited drugs during the period of time the prisoner is incarcerated.
- J. If the prisoner does not have five days of earned release credits, the prisoner shall forfeit the prisoner's existing earned release credits and shall be ineligible from accruing earned release credits until the number of earned release credits the prisoner would have otherwise accrued equals the difference between five days and the number of existing earned release credit days the prisoner forfeits pursuant to this section.

Sec. 4. <u>Sex offender probation study committee; membership;</u> duties

- A. The sex offender probation study committee is established consisting of the following members:
 - 1. The attorney general or the attorney general's designee.
 - 2. The chairperson of the senate judiciary committee.
- 3. A member of the minority party in the senate who is appointed by the president of the senate.
- 4. The chairperson of the house of representatives judiciary committee.
- 5. A member of the minority party in the house of representatives who is appointed by the speaker of the house of representatives.
- 6. Two sheriffs or their designees who are appointed by the president of the Arizona county attorneys and sheriffs association, one of whom

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represents a county with a population of more than four hundred thousand persons according to the most recent United States decennial census and one of whom represents a county with a population of four hundred thousand persons or less according to the most recent United States decennial census.

- 7. Two chiefs of police or their designees who are appointed by the president of the Arizona association of chiefs of police, one of whom represents a city or town in a county with a population of more than four hundred thousand persons according to the most recent United States decennial census and one of whom represents a city or town in a county with a population of four hundred thousand persons or less according to the most recent United States decennial census.
- 8. Two county attorneys or their designees who are appointed by the chairman of the Arizona prosecuting attorneys' advisory council, one of whom represents a county with a population of more than four hundred thousand persons according to the most recent United States decennial census and one of whom represents a county with a population of four hundred thousand persons or less according to the most recent United States decennial census.
- 9. Two county adult probation officers or their designees who are appointed by the chief justice of the supreme court, one of whom represents a county with a population of more than four hundred thousand persons according to the most recent United States decennial census and one of whom represents a county with a population of four hundred thousand persons or less according to the most recent United States decennial census.
- 10. One state adult parole administrator or the administrator's designee who is appointed by the governor.
- 11. The director of the department of public safety or the director's designee.
- 12. The director of the department of transportation or the director's designee.
- 13. One person who is licensed pursuant to title 32, chapter 19.1 and who is appointed by the state board of psychologist examiners.
- B. The members of the committee shall elect cochairpersons from the membership of the committee. The members shall meet at a time and place set by the cochairpersons.
- C. Members of the committee are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.
 - D. The committee shall:
 - 1. Evaluate the effectiveness of sex offender probation in Arizona.
- 2. Identify the reasons for sex offender overrepresentation in particular Arizona zip codes.
- 3. Determine the impact of sex offender overrepresentation in the zip codes that are overrepresented.
- 4. Formulate recommendations for the elimination or reduction of sex offender overrepresentation.

- 7 -

- 5. Determine the frequency and impact of sex offender probationers living near schools.
- 6. Formulate recommendations for the reduction of risks related to sex offender probationers living near schools.
 - E. The committee may utilize the services of the legislative staff.
- F. The committee shall submit a report of its findings and recommendations to the governor, the president of the senate and the speaker of the house of representatives on or before December 31, 2002 and shall provide a copy of this report to the secretary of state and the director of the Arizona state library, archives and public records.
 - Sec. 5. <u>Delayed repeal</u>

Section 4 of this act is repealed from and after December 31, 2002.

Sec. 6. Short title

This act shall be known as and may be cited as "Chris's Law: Victims' Protection Act".

Sec. 7. <u>Conditional enactment</u>

Section 13-3961, Arizona Revised Statutes, as amended by this act, does not become effective unless the Constitution of Arizona is amended by vote of the people at the next general election to provide that a person shall not be admitted to bail if the proof is evident or the presumption great that the person is guilty of sexual assault, sexual conduct with a minor under fifteen years of age or child molestation.

APPROVED BY THE GOVERNOR MAY 17, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2002.

- 8 -

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Passed the House May 6	, 20 <u><i>02</i>,</u>	Passed the Senate	arch 21	2002
by the following vote:		by the following vote:	28	Ayes,
	2 Not Voting	Nays,	0	Not Voting
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S.B. 1202

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this	day of	, 20,
ıt	o'clock	M.
	S	ecretary of State

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate May 13, 20	02
by the following vote:	Ayes,
Nays, Not Vo	oting
President of the Senate Recretary of the Senate	
EXECUTIVE DEPARTMENT OF ARIZONA OFFICE OF GOVERNOR	
This Bill was received by the Governor this	
13 day of May 2003 at 2:20 o'clock M.	
Secretary to the Governor day of	
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S.B. 1202

Approved this ____